

## **Alternate Procurement Request Form**

Occasionally, circumstances arise under which a fully competitive procurement process maybe difficult or impossible. Procurement is noncompetitive when there is no bidding process. Limited competition procurements occur when competition is possible, but the requirements of the bid restrict competition to particular suppliers or products. These types of procurement are exceptions to the state policy that purchases be completed through full competition with fair and equal opportunity to all qualified vendors. Therefore, limited and noncompetitive procurements should only be used when truly necessary and authorized by state law or rule. When a limited competitive or noncompetitive procurement is contemplated, the purchasing agency must make a determination (ref. N.D.C.C. § 54-44.4-05, N.D.A.C. § 4-12-09). Contact the OMB State Procurement Office at 701-328-2740 for assistance.

### **Approval authority**

The agency head or designee has authority to approve determinations up to \$25,000. The OMB State Procurement Office must approve all determinations over \$25,000. Any requests to purchase from a GSA contract or another government entity's contract must be reviewed by the OMB State Procurement Office. If the procurement officer has not provided sufficient evidence to make an independent examination and determination of the material facts of the procurement, as required in N.D.A.C. 4-12-09, the approving official may return the request form for additional justification or require the procurement officer to issue a notice of intent to make a noncompetitive purchase.

### **Notice Of Intent To Make A Noncompetitive Purchase**

Notice of intent to make a noncompetitive purchase may be issued to attempt to identify alternate sources for the needed commodity or service. A notice of intent template is available on the OMB State Procurement Office website. The notice describes the required commodity or service thought to be available only from limited sources or one source, and it invites vendors to contact the procurement officer to propose an alternate source. Issue the notice to vendors on the state bidders list and any other known potential bidders. Allow at least a seven day response time. If vendors respond, determine whether the proposed alternate source is a viable option. If no alternate sources are identified, the limited competitive or noncompetitive determination is valid.

### **Determination Not Required**

Alternate Procurement determinations are not required for government entities, commodities and services exempted from state procurement practices by N.D.C.C. § 54-44.4-02 And N.D.A.C. § 4-12-01-04, as follows:

1. Land, building, space, or the rental thereof. [Note: Leases for office space off the Capitol Grounds must be reviewed by the Office of the Attorney General and approved by OMB Facility Management, ref. N.D.C.C. § 54-21-24.1 and OMB Fiscal Policy 109.]
2. Telephone and telegraph service, electrical light, and power services.
3. Public books, maps, periodicals, and technical pamphlets.
4. Department of Transportation materials, equipment, and supplies in accordance with N.D.C.C. § 24-02-16.
5. Procurements through a contract or other instrument executed by the Industrial Commission under Chapter 54-17.5.
6. Services for the maintenance or servicing of equipment by the manufacturer or authorized servicing agency of that equipment when the maintenance or servicing can best be performed by the manufacturer or authorized service agent, or when such a contract would otherwise be advantageous to the state.
7. Emergency purchases. See SFN 51627 Emergency Purchase Form
8. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services.
9. Specific commodities and services as determined by written directive by the Director of OMB in N.D.A.C § 4-12-01-04 as follows:
  - a. Contracts for services of legal counsel with attorneys who are not employed by the state, pursuant to N.D.C.C. § 54-12-08.
  - b. Contracts for public buildings and public improvement contract bids, pursuant to N.D.C.C. Title 48.
  - c. Contracts for architect, engineer, and land surveying services pursuant to N.D.C.C. Chapter 54-44.7.
  - d. Contracts for concessions, pursuant to N.D.C.C. Chapter 48-09.
  - e. Grant programs; this does not include procurements using grant dollars.
  - f. Professional memberships.

Alternate Procurement determinations are not required for the following:

1. Procurements under \$2500. [N.D.A.C. § 4-12-08-02 (1)]
2. Commodities or services purchased from state agencies, correctional institutions or other government entities. [N.D.C.C. § 54-44.4-05 (2)(e); N.D.A.C. § 4-12-15-01]
3. Commodities and services for which competition is waived under N.D.A.C. § 4-12-09-01 (3):
  - a. Contracts for legal services, subject to the requirements of N.D.C.C. § 54-12-08;
  - b. Contracts for professional witnesses to provide for professional services or testimony related to existing or probable lawsuits in which the State may become a party;
  - c. Contracts for temporary administrative law judges pursuant to N.D.C.C. § 54-57-02.
  - d. Contracts for medical doctors, dentists, psychologists, and other medical specialists;
  - e. Purchases of books, newspapers, magazine subscriptions, and periodicals;
  - f. Pre-recorded audiovisual materials including records, tapes, cassettes, compact discs, slides, transparencies, films, and videos;
  - g. Purchases of materials required for manufacturing and production by a purchasing agency engaged in manufacturing and production operations;
  - h. Where immediate expenditures are necessary to ensure the integrity of state records;
  - i. Purchases of livestock, fish, insects, and other animals;
  - j. Commodities for resale at state-operated concessions;
  - k. Purchases of items with cultural, historical, or archaeological significance for museums or archival purposes;
  - l. Purchases of works of art;
  - m. Contracts for residential and treatment services to ensure continuity of client care and vocational rehabilitation commodities for clients of the Department of Human Services;
  - n. Contracts for performers, entertainers, and guest speakers; excluding contracts for education, instruction or training;
  - o. Medications, pharmaceuticals, metabolic foods, food supplements, food replacements, vitamins, and therapeutics, as prescribed by healthcare professionals for patients of a state facility or clients of a state program.

A prior written determination using the SFN 51403 Alternate Procurement Request Form is required for all other requests for limited competitive and noncompetitive purchases.



# ALTERNATE PROCUREMENT REQUEST

Office of Budget and Management

CSD/State Procurement Office

SFN 51403 (5/2007)

Name of Agency or Institution	Business Unit Number	Date Of Request	Requisition/Tracking Number (Optional)	
Procurement Officer		Telephone Number	Fax Number	E-Mail
Description of Service or Commodity - Describe the intended purpose. (Include manufacturer, brand, model, and other identifiers.)				
Total Estimated Cost - If a term contract, include any provisions for contract renewal or extension (e.g. \$10,000/Yr with two (2) annual renewal options).				
Future Considerations <input type="checkbox"/> Reoccurring Purchase <input type="checkbox"/> One-Time Purchase <div style="float: right;">           Will this purchase obligate us to a particular vendor for future Purchases?            (Either in terms or maintenance or if we purchase this item, will we need or be required to purchase more "like" items in the future to match this one?)         </div>				
Procurement Type <input type="checkbox"/> Limited Competitive Procurement. <input type="checkbox"/> Noncompetitive Procurement				
<b>Contractor Information (Non-Competitive Only)</b>				
Contractor	Contact Person	Telephone Number:	Fax Number	
Address:	City	State	Zip Code	
Indicate whether registration with the Secretary Of State is required.(See OMB Guidelines for Vendor Registration Requirements) <input type="checkbox"/> Yes <input type="checkbox"/> No				
Price Considerations (Noncompetitive Only) Why is the price for this product or service considered fair and reasonable? Describe the negotiation efforts, if any, that have been made with the vendor to obtain the best possible price.				
<b>Authority For Limited Or Noncompetitive Procurement</b> Competition can be limited under the following N.D.C.C. or N.D.A.C. provisions. Check the appropriate authority reference. <ul style="list-style-type: none"> <li><input type="checkbox"/> The commodity or service is available from only one source. [N.D.C.C. § 54-44.4-05 (2)(a)]</li> <li><input type="checkbox"/> The commodity or service is available from another government entity's contract. [N.D.C.C. § 54-44.4-13]. <u>NOTE:</u> The contract must be reviewed by OMB State Procurement Office.</li> <li><input type="checkbox"/> The commodity or service is to be purchased for experimentation or trial. [N.D.C.C. § 54-44.4-05(2)(b)]</li> <li><input type="checkbox"/> No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process.              [N.D.C.C. § 54-44.4-05(2)(c)] <u>NOTE:</u> If only one responsive bid or proposal was received in response to a solicitation, the procurement officer may make an award to the vendor upon determination that the specifications were not restrictive in accordance with N.D.A.C. § 4-12-06-02. If only one responsive bid or proposal is received in response to a solicitation, and the price submitted is not fair and reasonable and there is not time for resolicitation, or it is unlikely that resolicitation will increase the number of bids or proposal, the procurement may be conducted as a limited competitive or noncompetitive purchase, as appropriate. (N.D.A.C. § 4-12-11-08)</li> <li><input type="checkbox"/> Commodities are being purchased for over-the-counter resale. [N.D.C.C. § 54-44.4-05 (2)(d)]</li> <li><input type="checkbox"/> A used commodity is advantageous to the state and the commodity is available only on short notice. [N.D.C.C. § 54-44-05 (2)(g)]</li> <li><input type="checkbox"/> The commodity is a component or replacement part for which there is not commercially available substitute and which can be obtained only from the manufacturer. [N.D.C.C. § 54-44.4-05 (2)(h)]</li> <li><input type="checkbox"/> Compatibility with equipment currently owned by the state is essential to the proper functioning of that equipment.[N.D.C.C. § 54-44-05 (2)(i)]</li> <li><input type="checkbox"/> Products or services exclusive to particular individuals or business entities are required, but competition for that proprietary product or service exists. [N.D.A.C. § 4-12-09-02 (1)(a)]</li> <li><input type="checkbox"/> Circumstances require that commodities or services be provided by vendors within a specific geographic area, such as equipment requiring local service, on-site service within a specific time, or delivery of perishables.(N.D.A.C. § 4-12-09-02 (1)(b))</li> <li><input type="checkbox"/> It is determined that a competitive sealed bid or competitive sealed process is impracticable or not in the best interest of the state. [(N.D.A.C. 4-12-09-02 (1)(c))]</li> <li><input type="checkbox"/> The services or the circumstances are of such a nature that deviation from the procurement process is appropriate. [N.D.C.C. § 54-44-4.05 (2)(j)]. <u>NOTE:</u> The agency must provide substantiating documentation.</li> </ul>				

**Justification Of Limited Competitive/Noncompetitive Purchase And Supporting Documentation**

Explain why a fully competitive procurement method is impracticable or not in the best interest of the state.

Why is this commodity or service available from limited sources or one source? Provide factual material evidence, such as written documents, records, supporting data, affidavits, or other information. (e.g. describe research conducted, obtain and attach a letter from the manufacturer, etc.)

**Disapproval Consequences**

What are the consequence(s), including a dollar estimate of the financial impact, if this request for limited competitive or non-competitive purchase is not approved?

Agency Approval (Up To \$25,000)	
Instructions for agency head or designee: The procurement officer must cite the authority for the limited competitive or noncompetitive purchase and provide evidence necessary for an independent examination and determination of the material facts of the procurement (N.D.A.C. § 4-12-09).	
Name (Printed or Typed)	Telephone Number
<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved <input type="checkbox"/> Returned for further justification <input type="checkbox"/> Send notice of intent to make a noncompetitive purchase Comments:	
I certify to the best of my knowledge and belief that all the information on this request, including any attachments, is true and accurate.	
Signature	Date
Office of Management and Budget – State Procurement Office Approval (\$25,000 and Over)	
Name (Printed or Typed)	Telephone Number
<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved <input type="checkbox"/> Returned for further justification <input type="checkbox"/> Send notice of intent to make a noncompetitive purchase Comments:	
Signature	Date